

**NOTICE OF ADOPTION OF EMERGENCY REGULATIONS**

**California Code of Regulations  
Title 15, Crime Prevention and Corrections  
Division 3, Department of Corrections**

**NOTICE IS HEREBY GIVEN** that the Director of the Department of Corrections (CDC), pursuant to rulemaking authority granted by Penal Code (PC) Section 5058, in order to implement, interpret and make specific PC Section 5054, proposed to amend Section 3006 in the California Code of Regulations (CRC), Title 15, Division 3 relating to the Contraband - Frontal Nudity.

**PUBLIC HEARING:**

Date and Time: December 18, 2002, 9:00 AM to 12:00 PM  
Place: Department of Water Resources Auditorium  
1416 Ninth Street  
Sacramento, CA 95814  
Purpose: To receive comments about this action.

**PUBLIC COMMENT PERIOD:**

The public comment period will close December 18, 2002 at 5:00 p.m. Any person may submit public comments in writing (by mail, by fax, or e-mail) regarding the proposed changes. To be considered by the Department, comments must be submitted to the Department of Corrections, Regulation and Policy Management Branch, P.O. Box 942883, Sacramento, CA 94283-0001; by fax at (916)322-3842; or by e-mail at [RPMB@executive.corr.ca.gov](mailto:RPMB@executive.corr.ca.gov) before the close of the comment period.

**CONTACT PERSON:**

Please direct any inquiries regarding this action to:

**Rick Grenz, Chief,  
Regulation and Policy Management Branch  
Department of Corrections  
P.O. Box 942883, Sacramento, CA 94283-0001  
Telephone (916) 322-9702**

In the event the contact person is unavailable, inquires should be directed to the following back-up person:

**A. Cunningham  
Regulation Management Unit  
Telephone (916) 322-9702**

Questions regarding the substance of the proposed regulatory action should be directed to:

**A. Sisneros  
Institutions Division  
Telephone (916) 323-4060**

**LOCAL MANDATES:**

This action imposes no mandates on local agencies or school districts, or a mandate, which requires reimbursement pursuant to Government Code Section 17561.

**FISCAL IMPACT STATEMENT:**

- Cost or savings to any state agency: *None*
- Other non-discretionary cost or savings imposed on local agencies: *None*
- Cost or savings in federal funding to the state: *None*

**EFFECT ON HOUSING COSTS:**

The Department has made an initial determination that the proposed action will have no significant effect on housing costs.

**COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES:**

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

**SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS:**

The Department has initially determined that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

**EFFECT ON SMALL BUSINESSES:**

The Department has determined that the proposed regulations may not affect small businesses. It is determined that this action has no significant adverse economic impact on small business, because they are not affected by the internal management of state prisons.

**ASSESSMENTS OF EFFECTS ON JOB AND/OR BUSINESS CREATION, ELIMINATION OR EXPANSION:**

The Department has determined that the proposed regulation will have no affect on the creation of new or the elimination of existing jobs or businesses within California, or affect the expansion of businesses currently doing business in California.

**CONSIDERATION OF ALTERNATIVES:**

The Department must determine that no reasonable alternative considered by the Department, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which the action is proposed

or would be as effective and less burdensome to affected private persons than the proposed regulatory action.

**AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS:**

The Department has prepared and will make available the text and the Initial Statement of Reasons of the proposed regulations. The rulemaking file for this regulatory action, which contains those items and all information on which the proposal is based (i.e., rulemaking file) is available to the public upon request directed to the Department's contact person. The proposed text, Initial Statement of Reasons, and the Notice of Proposed Action will also be made available on the Department's website <http://www.cdc.state.ca.us>.

**AVAILABILITY OF THE FINAL STATEMENT OF REASONS:**

Following its preparation, a copy of the final statement of reasons may be obtained from the Department's contact person.

**AVAILABILITY OF CHANGES TO PROPOSED TEXT:**

After considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications, which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Requests for copies of any modified regulation text should be directed to the contact person indicated in this notice. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

**INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:**

PC Section 5054 vests with the Director the supervision, management and control of the prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of inmates.

PC Section 5058 authorizes the Director to prescribe and amend regulations for the administration of prisons.

PC Section 5058.3 authorizes the Director to adopt, amend, or repeal emergency regulations conducted pursuant to Government Code Section 11340.

This action amends provisions governing Contraband within the California Department of Corrections (Department). California Code of Regulations, Section 3006(c), is being amended to state that inmates shall not possess or have under their control any personal photos, magazines, drawings, or other pictorial format, which contains materials of a sexually explicit nature.

This regulation includes the description of sexually explicit materials. This regulation states that sexually explicit images that depict frontal nudity whether in the form of personal photographs, drawings, magazines, and/or pictorials shall be considered as

contraband and that inmates shall not be allowed to possess such materials. This regulation further describes sexually explicit materials as material that depicts frontal nudity of either gender, including the exposed female breast(s) and/or the genitalia of either gender.

Sexually explicit letters, articles, and photographs of clothed person(s) are not included in the regulation and will be allowed. Departmentally purchased or acquired educational, medical/scientific, artistic materials such as books or guides purchased by the Department for inclusion in institution libraries and/or educational areas will be allowed. Additionally, inmates shall be allowed to purchase or possess materials, including, but not limited to anatomy medical reference books, general practitioner reference books or guides, National Geographic or artistic reference material depicting historical, modern, and/or post modern era art, if these materials are approved by the institution head or their designee on a case-by-case basis.

This regulation will aid in the legitimate penological interests of maintaining the safety and security of the prisons, rehabilitating inmates, reducing sexual harassment of correctional officers and preventing a hostile work environment. Sexually explicit materials, within the institutions, have contributed to an increase of verbal assaults and have lead to intimidation of female correctional staff when attempting to perform cell searches. Inmates subject female correctional staff to a daily barrage of unwarranted sexual advances, thus causing an uncomfortable working environment and continued confrontation with inmates.

Additionally, unrestricted access to sexually explicit material could lead to bartering between inmates and anatomical comparisons could lead to fights between inmates thereby jeopardizing the safety of prison staff and other inmates.

A recent 9<sup>th</sup> Circuit Court decision (*Mauro v. Arpaio*, 188 F.3d 1054, 9<sup>th</sup> Cir. 1999) upheld the constitutionality of a correctional policy prohibiting prisoners from possessing sexually explicit materials that showed frontal nudity of either gender, including the exposed female breast(s) and/or the genitalia of either gender, because the policy was reasonably related to a legitimate penological interest.

The Department contends that prohibiting sexually explicit materials that show frontal nudity is aimed at the legitimate interest of maintaining prison security, rehabilitating inmates, and reducing sexual harassment. The Department also contends that reducing violence and aggression toward female staff, and protecting the safety of departmental staff at the institutions, in general, is a legitimate interest, and that reducing sexual harassment and not allowing a hostile work environment in particular, likewise is legitimate.

The Department contends that inmates retain alternative means of exercising their constitutional right to receive sexually explicit communications, since these regulations do not prohibit sexually explicit letters nor does it prohibit sexually explicit articles or photographs of clothed persons.